

(O-86-210 REV. 1)
ORDINANCE NUMBER O-16660 (NEW SERIES)
ADOPTED ON JUNE 2, 1986

AN EMERGENCY ORDINANCE PURSUANT TO SECTIONS 17 AND 99 OF THE CITY CHARTER AUTHORIZING A LEASE AGREEMENT (POLICE CAPITAL IMPROVEMENTS PROJECT) WITH RAUSCHER PIERCE REFSNES LEASING, INC., A TRUST AGREEMENT WITH BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, CERTAIN AMENDMENTS TO RELATED LEASE AGREEMENTS AND TRUST AGREEMENTS AND A FEE SCHEDULE FOR TRUST SERVICES RELATING TO THE ISSUANCE OF REFUNDING CERTIFICATES OF PARTICIPATION IN AN AGGREGATE PRINCIPAL AMOUNT OF \$63,330,000 FOR A TERM NOT EXCEEDING 25 YEARS.

WHEREAS, the City of San Diego (the "City") and Imperial Municipal Services Group, Inc., a California corporation, ("Imperial") have heretofore entered into that certain Lease-Purchase Agreement ("Western Division Police Station Project"), dated as of March 1, 1983 (the "Western Division Lease"); and

WHEREAS, the City and Imperial have heretofore entered into that certain Lease-Purchase Agreement (Southeastern Division Police Station Project), dated as of April 1, 1984 (the "Southeastern Division Lease"); and

WHEREAS, the City and Rauscher Pierce Refsnes Leasing, Inc. (the "Corporation") have heretofore entered into that certain Lease Agreement (Police Administration and Technical Center), dated as of September 1, 1984 (the "Administration Center Lease"); and

WHEREAS, the City and the Corporation have heretofore entered into that certain Lease Agreement (San Diego Police Heavy Maintenance Facility), dated as of February 1, 1985 (the "Maintenance Facility Lease"); and

WHEREAS, the City has determined that in order to reduce the aggregate amount of payments due under the Western Division Lease, the Southeastern Division Lease, the Administration Center Lease and the Maintenance Facility Lease (collectively referred to herein as the "Project Leases"), it is necessary to provide for the refinancing of the City's obligations under the Project

Leases, and to that end, has determined that it is necessary and desirable to secure the payment of the lease payments due under the Project Leases by making the deposit provided for in Section 4.7 of the Administration Center Lease and Maintenance Facility Lease, as well as Section 4(h) of the Southeastern Division Lease and Western Division Lease, and to enter into that certain Lease Agreement (the "Lease Agreement"), dated as of June 1, 1986, by and between the City and the Corporation, pursuant to which the Corporation will lease to the City all of the sites and the projects which are being leased pursuant to the Project Leases; and

WHEREAS, as a financing mechanism, Certificates of Participation will be executed and delivered evidencing the proportionate interests of the owners thereof in lease payments (the "Lease Payments") to be made by the City to the Corporation under the Lease Agreement; and

WHEREAS, Bank of America National Trust and Savings Association ("Trustee") will be designated the Trustee to receive the Lease Payments and to pay the principal and interest components thereof to the owners of the Certificates of Participation; and

WHEREAS, pursuant to the City's direction, the Certificates of Participation in the principal amount of \$63,330,000 were sold by PaineWebber, Inc. and Metro Equities Corporation (the "Underwriters"), and the City Manager, pursuant to Resolution No. R-265639, executed a Purchase Contract dated May 8, 1986, by and among the City and the Underwriters (the "Purchase Contract"), thereby realizing a future value savings of approximately \$50,000,000 on the refunding of the Project Leases; and

WHEREAS, in connection therewith, the Trustee, on behalf of the City, filed an application for obligations of the United States Government -- State and Local Government Series ("SLGs"), on May 9, 1986, pursuant to which the SLGs were to be delivered on June 18, 1986; and

WHEREAS, on May 12, 1986, the City Attorney for the City was informed that, due to a filing error, the required notice of Ordinance No. O-16656, to be adopted at the City Council meeting scheduled for May 19, 1986, had not been received for inclusion in the San Diego Daily Transcript on a timely basis; and

WHEREAS, as a result, Ordinance No. O-16656 was adopted May 27, 1986, and will therefore not become effective until June 26, 1986; and

WHEREAS, under Ordinance No. O-16656, the City will not be able to deliver the Project Leases or the Certificates of Participation until June 26, 1986; and

WHEREAS, the failure of the City to deliver the Project Leases and the Certificates of Participation (together with the proceeds thereof), on June 18, 1986, will cause the City to fail to take delivery of the SLGs on June 18, 1986, as provided in the SLG application; and

WHEREAS, 31 C.F.R., Section 344.3, provides that "except in cases where failure to complete a [SLG] subscription is established to have been due to circumstances not foreseen or contemplated, any subscriber [such as the City] which fails to make timely payment for its subscription [of SLGs] will be ineligible thereafter to subscribe for securities under this offering for a period of not less than six months;" and

WHEREAS, application for relief from the scheduled delivery date of June 18, 1986, was made to the Bureau of Public Debt on behalf of the City on May 22 by legal counsel to the Underwriters; and

WHEREAS, representatives of the Bureau of Public Debt have refused to indicate that the application for relief will be reviewed in a timely manner or that it will ultimately be granted; and

WHEREAS, the Underwriters have indicated that if the City were to rely upon a favorable response from the Bureau of Public Debt, and such response was not forthcoming on a timely basis, it may be impossible to accomplish the refunding of the Project Leases in accordance with the terms of the Purchase Contract, due to market fluctuations of federal securities, which would have to be purchased in lieu of SLGs, thereby putting the approximately \$50,000,000 of future value savings at risk; and

WHEREAS, if the City were to immediately cancel its SLG order (and accomplish the refunding of the Project Leases through the purchase of open market securities) to prevent such loss of savings to be realized pursuant to the terms of the Purchase Contract, the City will be precluded from subscribing for SLGs on any other of its refundings for a period of six months from June 18, 1986 (31 C.F.R. Section 344.3); and

WHEREAS, the City is proposing to refund certain of its Open Space Park Bonds of 1978, Series 81 A and Series 82 A heretofore issued by the City on behalf of San Diego Open Space Park Facilities District No. 1 (the "Park Bonds"), in the approximate aggregate principal amount of \$30,000,000, in order to accomplish a savings of approximately \$7,000,000; and

WHEREAS, savings realized from the refunding of the Park Bonds, after payment of costs of issuance incurred in connection therewith, will increase moneys available from time to time in the City's Environmental Growth Fund, which moneys shall be used

exclusively for the purpose of preserving and enhancing the environment of the City of San Diego; and

WHEREAS, the City has been advised by Smith Barney, Harris Upham & Co., Inc., the senior managing underwriter of the Park Bonds, that if the escrow for the refunding of the Park Bonds is comprised of open market securities instead of SLGs, the City will experience an immediate loss of approximately \$250,000; and

WHEREAS, the City has been advised by Bond Counsel on the refunding of the Project Leases and Bond Counsel on the refunding of the Park Bonds that if the City cancels its SLG order, the City will be precluded from purchasing SLGs for a period of six months, which may adversely affect any refundings of the City during such period; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The foregoing recitals are true and correct and the Council so finds and determines.

Section 2. The emergency requiring the adoption of this ordinance as an emergency measure is the provision for the immediate preservation of public property through: (i) insuring that the City will save approximately \$50,000,000 on refunding of the Project Leases; (ii) preventing the City from losing approximately \$250,000.00 savings on the refunding of the Park Bonds; and (iii) insuring that the City will not be precluded from subscribing for SLGs for any other refundings of the City's obligations for the six months.

Section 3. The proposed form of Lease Agreement, dated as of June 1, 1986, by and between the City and Lessor, which is on file in the office of the City Clerk as Document No. O-16656-1, is hereby approved, and the City Manager is hereby authorized and directed to execute said agreement, and the City Clerk is directed to attest the City Manager's signature, so long as: (i) the principal amount of the Lease Agreement does not exceed \$63,300,000; (ii) the term of the Lease Agreement does not exceed 25 years; (iii) the total Lease Payments to be paid by the City under the Lease Agreement in any fiscal year does not exceed the aggregate amount of Lease Payments due in any fiscal year under the Project Leases; and (iv) future value savings realized between the Project Leases and the Lease Agreement equal at least \$45,000,000.

Section 4. The proposed form of Amendment to Trust Agreement (Southeastern Division Police Station Project), dated as of June 1, 1986, by and among the Trustee, Imperial, and the City, which is on file in the office of the City Clerk as Document No. O-16656-2, is hereby approved. The City Manager and the City

Clerk are authorized and directed to execute said Amendment to Trust Agreement on behalf of the City.

Section 5. The proposed form of Amendment to Lease Agreement (Southeastern Division Police Station Project), dated as of June 1, 1986, by and between Imperial and the City, which is on file in the office of the City Clerk as Document No. O-16656-3, is hereby approved. The City Manager and the City Clerk are authorized and directed to execute said Amendment to Lease Agreement on behalf of the City.

Section 6. The proposed form of Amendment to Trust Agreement (Western Division Police Station Project), dated as of June 1, 1986, by and among the Trustee, Imperial, and the City, which is on file in the office of the City Clerk as Document No. O-16656-4, is hereby approved. The City Manager and the City Clerk are authorized and directed to execute said Amendment to Trust Agreement on behalf of the City.

Section 7. The proposed form of Amendment to Lease Agreement (Western Division Police Station Project), dated as of June 1, 1986, by and between Imperial and the City, which is on file in the office of the City Clerk as Document No. O-16656-5, is hereby approved. The City Manager and the City Clerk are authorized and directed to execute said Amendment to Lease Agreement on behalf of the City.

Section 8. The proposed form of Trust Agreement, dated as of June 1, 1986, by and among Trustee, Lessor and City, which is on file in the office of the City Clerk as Document No. O-16656-6, is hereby approved. The City Manager and the City Clerk are authorized and directed to execute said Trust Agreement on behalf of the City, and to insert the appropriate interest rates and principal maturity schedule in Section 2.03 thereof after the interest component of the Lease Payments and such principal maturity schedule are determined.

Section 9. The Trustee, as compensation for acting as Trustee pursuant to the aforesaid Trust Agreement, is hereby authorized to pay to itself out of the proceeds of the delivery of said Certificates of Participation such amounts to which it is entitled pursuant to its letter to the City, dated April 25, 1986, a copy of which is on file in the office of the City Clerk as Document No. O-16656-7.

Section 10. The Lease Agreement, Amendment to Lease Agreement (Southeastern Division Police Station Project), the Amendment to Trust Agreement (Southeastern Division Police Station Project), the Amendment to Lease Agreement (Western Division Project), the Amendment to Trust Agreement (Western Division Project) and the Trust Agreement are subject to minor

changes not inconsistent with the essential terms thereof and which are approved by the City Manager. The City Manager's approval of such changes shall be conclusively established by his execution of the Lease Agreement and Trust Agreement.

Section 11. This ordinance, adopted as an emergency measure pursuant to Section 17 of the Charter, shall take effect immediately after its passage.

APPROVED: John W. Witt, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps

05/28/86

05/30/86 REV. 1

Or.Dept:Fin.Mgmt.

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Form=o.none